



STATE OF INDIANA

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March 28, 2013

Ms. Stephanie Graf
8060 Colonial Heights
Brookville, Indiana 47012

Re: Formal Complaint 13-FC-102; Alleged Violation of the Access to Public Records Act by Purdue University

Dear Ms. Graf:

This advisory opinion is in response to your formal complaint alleging Purdue University ("University") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Steven R. Schultz, Legal Counsel, responded in writing on behalf of the University. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you provide that on March 12, 2013, your attorney of record, Mr. Ryan P. Sink, submitted a written request for records to the University. As of March 27, 2013, the date you filed your formal complaint with the Public Access Counselor's Office, you have yet to receive any response from the University to your request.

In response to your formal complaint, Mr. Schultz advised that the University did receive Mr. Sink's request on March 12, 2013. On March 15, 2013, the University's Public Records Officer responded in writing to the request, confirmed its receipt and outlined the University's plan for production. The correspondence was sent via facsimile. Upon receipt of your formal complaint, the University was able to determine that the facsimile sent on March 15, 2013 failed to properly transmit. The University regrets the clerical error and has resubmitted the original response. The University is in the process of reviewing all records maintained that would be responsive to your request, minus any applicable exceptions, and will be in contact with you shortly.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See*

I.C. § 5-14-3-1. The University is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the University's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply. Here your written request for records was received by the University on March 12, 2013. Due to a clerical error, the University failed to acknowledge in writing the receipt of your written request within seven (7) days of receipt. Accordingly, it is my opinion that the University acted contrary to the requirements of section 9(b) of the APRA by acknowledging your request in writing within seven (7) days of receipt. However, it is clear from the University's response that the failure to comply with section 9(b) was not intentional, as the University has now rectified the clerical error and commenced the process of gathering and reviewing all records that would be responsive to your request. All of which I trust is in satisfaction of your formal complaint.

CONCLUSION

For the foregoing reasons, it is my opinion that the University acted contrary to section 9(b) of the APRA in not responding to your request within seven (7) days of its receipt. The University has rectified the clerical error and commenced the process of gathering and reviewing all records that would be responsive to your request, which I trust is in satisfaction of your formal complaint.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is stylized with a large initial "J" and a cursive "Hoage".

Joseph B. Hoage
Public Access Counselor

cc: Steven R. Schultz